

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Levita Simmons, Administrator of the
Estate of Arthur Scott, and Jeffrey
Orvis, Administrator of the Estate of
James Orvis,

Plaintiffs,

vs.

Tyson Foods, Inc., doing business as
Tyson Pet Products, and Tyson Fresh
Meats Group, a wholly owned
subsidiary of Tyson Foods, Inc., John
H. Tyson, Noel W. White, Dean Banks,
Steven R. Stouffer, Tom Brower, Mary
A. Oleksink, Elizabeth Croston, Scott
Walston, David Scott, Tom Hart, Cody
Brustkern, John Casey, Bret Tapken,
Hamdija Beganovic, Ramiz Mujelic,
and Unknown Plant Managers and
Supervisors at Tyson Waterloo Plant
and Unknown Plant Managers and
Supervisors at Tyson Independence
Plant,

Defendants.

CASE NO. 6:21-cv-02036

**TYSON FOODS, INC. and TYSON FRESH MEATS GROUP'S
MOTION TO DISMISS**

(Oral Argument Requested)

Tyson Foods, Inc. and Tyson Fresh Meats Group (“Tyson”) respectfully move to dismiss the complaint under Rule 12(b)(6) because the claim against Tyson is barred by the Iowa Workers’ Compensation Act.

In addition, the complaint fails to plausibly allege that Tyson caused the alleged injury, and even if the allegations were otherwise sufficient, the alleged cause of

action would be barred by the Iowa “COVID-19 Response and Back-to-Business Limited Liability Act” and preempted by federal law. This Motion is supported by the attached Brief in Support of Motion to Dismiss pursuant to Local Rule 7.

WHEREFORE, Tyson Foods, Inc. and Tyson Fresh Meats Group respectfully request this Court dismiss Plaintiffs’ complaint and for such further relief as the Court deems just and necessary.

Dated: June 28, 2021

Respectfully submitted,

/s/ Kevin J. Driscoll

Kevin J. Driscoll AT0002245

Andrew T. Patton AT0011703

FINLEY LAW FIRM, P.C.

699 Walnut Street, Suite 1700

Des Moines, Iowa 50309

Telephone: 515-288-0145

Facsimile: 515-288-2724

Email: kdriscoll@finleylaw.com

apatton@finleylaw.com

Christopher S. Coleman

(*pro hac vice* forthcoming)

Jessica L. Everett-Garcia

(*pro hac vice* forthcoming)

PERKINS COIE LLP

2901 N. Central Avenue, Suite 2000

Phoenix, Arizona 85012

Telephone: 602.351.8000

Facsimile: 602-648.7000

Email: CColeman@perkinscoie.com

JEverettGarcia@perkinscoie.com

**ATTORNEYS FOR TYSON FOODS,
INC., TYSON FRESH MEATS
GROUP, JOHN H. TYSON, NOEL W.
WHITE, DEAN BANKS, STEVEN R.
STOUFFER, TOM BROWER,
MARY A. OLEKSINK, ELIZABETH**

**CROSTON, SCOTT WALSTON,
DAVID SCOTT, AND RAMIZ
MUJELIC**

CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2021, a true and correct copy of the foregoing document was served upon all counsel of record via the Court's CM/ECF system as follows:

Elizabeth Araguas
NIDEY ERDAHL MEIER & ARAGUÁS, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, Iowa 52401
earaguas@eiowalaw.com

Jon Loevy
Gayle Horn
Roshna Bala Keen
Mark Loevy-Reyes
Katie Roche
LOEVY & LOEVY
311 N. Aberdeen
Chicago, Illinois 60607
jon@loevy.com
gayle@loevy.com
roshna@loevy.com
mark@loevy.com
katie@loevy.com

Attorneys for the Plaintiffs

Nicholas Klinefeldt
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309
nick.klinefeldt@faegredrinker.com

Attorneys for Defendants Tom Hartz, Cody Brustkern, John Casey, Bret Tapken, and Hamdija Beganovic

/s/ Kevin J. Driscoll